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SUPREME COURT

Supreme Court

October Term, 1960
No. 1045

CLAUDE S. GOSNELL, *et al.*,

Petitioners,

vs.

UNITED STATES OF AMERICA, STATE OF CALIFORNIA, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENT STATE OF CALIFORNIA IN OPPOSITION

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BRIEF FOR RESPONDENT STATE OF CALIFORNIA IN OPPOSITION

Opinions Below

The opinion of the District Court, from the judgment following which an interlocutory appeal was taken to the Court of Appeals, is not reported, but is set forth on page 9 of the Petition. An earlier opinion and order of the District Court for the Central District of California joining the State of California as a party is reported in 277 F. Supp. 11. The opinion of the Court of Appeals for the Ninth Circuit is not yet reported, but is set forth in the Appendix to the Petition.

Jurisdiction

Petitioners assert that jurisdiction of this Court rests on 28 U.S.C. section 1254(1).

Questions Presented

As far as the interests of the State of California are concerned, the questions presented are:

1. Whether the State of California owns the bed of non-tidal navigable waters to the low-water or to the high-water mark?

2. Whether lands owned by California in the beds of navigable waters are subject to acquisition by private parties by adverse possession?

Statement of the Case

The United States commenced this action by filing separate Complaints for Ejectment and for damages against the Gossetts and against the Williams and others, alleging that the lands in question were owned by the United States as part of the public domain and were withdrawn from entry. Petitioners asserted that the lands in question lie within the bed of the Colorado River as it existed at the time California entered the Union and remained so until the closing of Hoover Dam. The conclusion drawn by Petitioners from this was that upon admission of California to the Union the land was owned by the State of California and never thereafter owned by the United States. The Petitioners never alleged how, if at all, they acquired title from the State.

A motion for summary judgment by the United States was denied, and pursuant to an order of the District Court (277 F. Supp. 11) the State of California was made a party to the case. The State filed an answer which in substance (1) admitted that the United States owned the described land, (2) alleged that as between the United States and the State of California, the United States was the owner of the land, and (3) alleged that the State was not the owner of the described land in its sovereign capacity as the owner of the beds of navigable bodies of water within the State.

After the filing of the State's answer, the United States moved for Judgment as to Possession Only, or in the alternative Summary Judgment, which motion was granted. A Judgment as to Possession Only was entered in favor of the United States. This was affirmed by the Court of Appeals in an interlocutory appeal.

ARGUMENT

The conflicting claims of this case are a) that of the United States that the lands in question are part of the undisposed public domain and b) that of Petitioners that the lands were or are part of the sovereign lands of the State of California.

The basic question presented on appeal, and thus on certiorari, is whether a genuine issue of fact exists which would preclude the granting of a motion for summary judgment. As an adjunct, and among other issues of law, are two questions involving the interests of the State of California: 1) whether California claims sovereign non-tidal lands to the low or high water mark, and 2) whether private parties can acquire title to such sovereign lands by adverse possession. Both questions involve State law. The latter question was never raised in the District Court. The former question is of practical importance since the Petitioners do not seriously contend, if at all, that the lands in question lie below the low-water mark of the Colorado River. The Court of Appeals held that California claims only to the low-water mark on non-tidal navigable waters, and in any event adverse possession does not run against such sovereign lands under California law. Respondent State of California contends that the Court answered both questions correctly.

I

California's Ownership of the Bed of the Colorado River Extends to the Low-Water Mark

The State of California, in its sovereign capacity, is the owner of all tide lands and beds of navigable waterways within its boundaries. *Pollard's Lessee v. Hagan,* 44 U.S. (3 How.) 212, 229, 11 L. Ed. 565 (1845); *Shively v. Bowlby,* 152 U.S. 1, 43, 14 S. Ct. 548 (1894); *Hardin v. Jordan,* 140 U.S. 371, 383, 11 S. Ct. 808 (1891).

The Colorado River, below Black Canyon, is a navigable river (*Arizona v. California,* 283 U.S. 423, 453, 51 S. Ct. 522 (1931).) The west half of the river from the thirty-fifth parallel to the boundary of Mexico is within the boundaries of the State of California (Calif. Const. Art. XXI; Act of Admission, 9 Stats. 452), and was thus owned by California upon admission in 1850. This ownership moved as the river moved naturally and gradually, and conversely, if the change in the bed of the river was caused by an avulsion or suddenly, the State's ownership remained in the former bed. *St. Louis v. Rutz,* 138 U.S. 226, 245, 11 S. Ct. 337 (1891); *County of St. Clair v. Lovingston,* 90 U.S. (23 Wall.) 46, 66, 68, 23 L. Ed. 59 (1874).[1]

As the owner of the beds of navigable waterways, each state has the option, as a matter of state law, whether to claim ownership to the high-water mark, the low-water mark, or allow the adjoining property-

[1]Petitioners in their Statement of the Case and Argument state that the lands in question were part of the bed of the Colorado River in 1850. Respondent does not concede this, but contends it is legally immaterial, the true question being the location of the lands in relation to the bed of the river in its last natural position or, if still in a state of nature, its position today.

owner to own to the middle of the streams. *Hardin v. Jordan, supra,* 140 U.S. 371, 382, 11 S. Ct. 808 (1891); *Packer v. Bird,* 137 U.S. 661, 669-70, 11 S. Ct. 210 (1891); *Barney v. Keokuk,* 94 U.S. 324, 337, 24 L. Ed. 224 (1876).

The State of California, pursuant to this option, has clearly declared that as to lands covered by tidewater, the State takes to the high-water mark, and on non-tidal navigable waterways, the State takes to the low-water mark. Calif. Civ. Code §§ 670, 830; Calif. Code Civ. Proc. § 2077 (5). *Craig v. White,* 187 Cal. 489, 491-92; 202 Pac. 648 (1921); *Anderson v. Trotter,* 213 Cal. 414, 421, 2 P. 2d 373 (1931); *Foss v. Johnstone,* 158 Cal. 119, 127; 110 Pac. 294 (1910); *City of Los Angeles v. Aitken,* 10 Cal. App. 2d 460, 52 P. 2d 584 (1935); *Crews v. Johnson,* 202 Cal. App. 2d 256, 258; 21 Cal. Rptr. 2d 37 (1962).

The Court of Appeals correctly ruled as a matter of California law that California claims the bed of the west half of the Colorado River only to the low water mark.

II

Under California Law, Title to Sovereign Lands Cannot Be Acquired by Adverse Possession

As the Court of Appeals aptly stated, "In some mysterious manner, not disclosed by the record, they [petitioners] claim title from California." (App. to Ptn. p. 3.) Assuming, for the sake of argument, that the lands in question were owned by California as sovereign riverbed land, title could only have devolved on petitioners in one of two theoretical ways: a grant or patent from the State, or by adverse possession. No grant or patent has been produced. Similarly, title to sovereign

lands, under California law, may not be acquired by adverse possession.

Lands beneath navigable waters, as well as tide and submerged lands, which are owned by a state, are owned in their sovereign capacity. *Pollard's Lessee v. Hagan,* 44 U.S. (3 How.) 212, 229; 11 L. Ed. 565 (1845). In turn, these lands are held by the State in trust for purposes of commerce, navigation and fisheries. *Illinois Central R.R. Co. v. Illinois,* 146 U.S. 387, 452-54 (1892); *Colberg, Inc. v. State of California, ex rel. Dept. Pub. Wks.,* 67 Cal. 2d 408, 416 (1967). As such, they come within the rule of California law that land owned by the State which is dedicated or held for public use is not subject to loss by adverse possession. *People v. Chambers,* 37 Cal. 2d 552, 556-57, 233 P. 2d 557 (1951); *City of Oakland v. Burns,* 46 Cal. 2d 401, 406-07, 296 P. 2d 333 (1958). This rule has been applied numerous times by California courts to sovereign lands. *People v. Kerber,* 152 Cal. 731, 733-34, 93 Pac. 878 (1908); *City of Los Angeles v. Anderson,* 206 Cal. 662, 668, 275 Pac. 789 (1929) (actual and reclaimed tidelands); *Patton v. City of Los Angeles,* 169 Cal. 521, 147 Pac. 141 (1915) (filled tidelands); *People v. Banning Co.,* 167 Cal. 643, 649-50, 140 Pac. 587 (1914) (tidelands as distinguished from swamp and overflowed lands acquired by grant from the United States and held for sale by the State); *Cimpher v. City of Oakland,* 162 Cal. 87, 90, 121 Pac. 374 (1912) (tidelands); *City of Oakland v. Wheeler,* 34 Cal. App. 442, 454, 168 Pac. 23 (1917) (tidelands).

Thus, again, the Court of Appeals correctly ruled that the title to lands in question was not derived from the State of California.

Conclusion

The dispute in this matter is truly whether petitioners own or are entitled to remain on a portion of the Federal public domain. The resolution of the question is of no official concern to the State of California. As to the questions relating to the State's interest, the Court of Appeals correctly decided these, and it is respectfully submitted that the petition for a writ of certiorari should be denied as to those questions.

Respectfully submitted,

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